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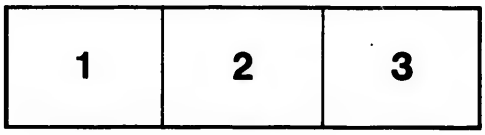

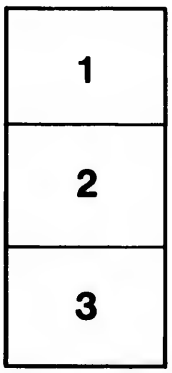

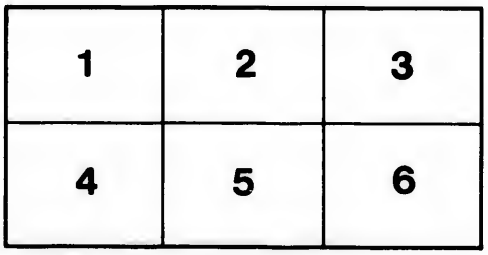

THE NEW LAWS

OF

EMPLOYERS' LIABILITY

IN

ENGLAND AND FRANCE

AND

THEIR BEARING ON THE LAW

OF THE

PROVINCE OF QUEBEC

WITH THE TEXT OF THE TWO ACTS

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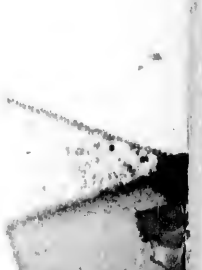

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PREFATORY NOTE.

This article is, with some additions, a lecture delivered to the "Junior Bar Association of Montreal.

An eclectic legal system, like that administered here, has the defects of its qualities. One of them is that English, French and American cases are thrown together pell-mell for the purposes of an argument. In the hurry of preparation it is very easy to overlook a difference of principle which may make the English case less applicable. I thought, therefore, that it might be useful to state the points of contrast in the two laws. As it stands, our law is in a curious position. A French writer, describing a similar state of affairs, wittily says : "les arrêts ne rendaient plus qu'un platonique hommage à la théorie classique du Code."

Lawyers are the most conservative of mortals. They cling with desperate tenacity to the formulæ of a past age. Even in countries where the law is not codified, its advance is almost imperceptible, unless the legislator rudely intervenes. Under a Code the judge is tied still more tightly to the formula. He must interpret and not make the law.

But it sometimes happens that the world moves too fast, or that the wheels of legislation are too slow. The old formula has got to appear so narrow and inadequate that the judge is as anxious as the counsel to give it a new interpretation. He expounds the texts as the ancients expounded the oracles. The oracle cannot have erred. That which has happened must have been the thing foretold.

If men expected something different it was because they misunderstood the dark saying.

So if the Code gets too narrow it must be read in another light. We must pour into it a new sense to fit it to a new world. In the following pages, I have tried to shew that this is our present condition as to this branch of the law.

The new English Act and the new French *Loi* are printed at the end.

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THE NEW LAWS OF EMPLOYERS' LIABILITY FOR ACCIDENTS IN ENGLAND AND FRANCE AND THEIR BEARING ON THE LAW OF THE PROVINCE OF QUEBEC.

It is a very important sign of the times that two of the chief industrial countries of Europe have lately been recasting the law of liability for accidents.

There is, I suppose, no more causal connection between the Workmen's Compensation Act 1897 and the "loi du 9 avril 1898" than if London and Paris were in different planets. But the problem to be solved was fundamentally the same in both countries, and if a closely similar solution has been found, there is at least a strong presumption that it is a solution which satisfies the popular sense of justice. Broadly speaking, both England and France have thrown overboard the traditional doctrine of the law, that a workman could never recover damages for injuries sustained through an accident, unless he could prove that the accident was caused by the fault of his employers.

The Roman law said *quae sine culpa accidunt a nullo præstantur* (*de reg. jur.* 23) and every modern system followed this general rule.

Under the new law the English workman must be compensated unless it is proved that the injury is attributable to his own "serious and wilful misconduct" s. 2, His Frenchbrother is only barred if he has "intentionally provoked the accident," s. 20 ; but the Court may diminish the damages if the accident was due to the "*faute inexcusable*" of the victim.

In this province the present law is stringent enough upon employers. Indeed, I venture to think that they

are often found liable only by giving to the code an interpretation which it was never intended to bear. But the law, as now administered, has two great defects. It is expensive and it is uncertain. Every judge has his own opinion as to the evidence necessary to establish fault. And both judges and juries give damages which vary so much that an employer who is threatened with an action can hardly calculate how much he ought to offer, if he is willing to compromise. A lawyer cannot advise his client with confidence. He cannot say "I am sure you are liable," but only "If the case is before such and such a judge you will be held liable" and as to the amount of damages—that it is quite impossible to predict. Moreover, it is notorious that damages are frequently laid at nineteen hundred and ninety-nine dollars to prevent appeal to the Supreme Court, because that tribunal is known to hold stricter views as to the evidence necessary to prove fault on the part of the employer. The new laws in Europe fix a definite scale of compensation according to which the particular sum can be determined in a very simple and inexpensive way. This will be an immense relief to the employer.

It is true that they make him liable in some cases where upon the old theory no compensation would be due. But the same result is generally reached here by doing great violence to the old theory without definitely rejecting it. And in the rare case in which it is held that there is no liability because there was no fault, the employer has to spend in the costs of establishing his non-liability a far larger sum than he would have to pay under the English "Workmen's Compensation Act." The main difference is that by the new law the injured workman always gets compensation. By the old law, at any rate here, the

lawyer always gets compensation. Occasionally, an employer by compensating the lawyers succeeds in proving that the injured man ought not to be compensated. I am assured by a judge of long experience that in his opinion employers would be no worse off if a law were passed here, something like the new law in England.

At the same time, to prevent misunderstanding, I desire to say that I have no intention of discussing with any fulness the expediency of new legislation in this Province. That depends upon social and economic considerations, as well as upon those which are purely legal. It is outside the scope of the present article. All that concerns us as lawyers is to study the alterations made in Europe by recent legislation.

In the present House of Commons in England the manufacturers are even more strongly represented than is usually the case. Mr. Chamberlain, who was the moving spirit in carrying the Bill through, is a large manufacturer, and is thoroughly familiar with the conditions of industry. If the manufacturers had regarded the measure as seriously inimical to their interests, a conservative government would hardly have introduced it, and if they had done so, a House of Lords, not suspected of tendencies to socialism, would have given it a short shrift.

Neither England nor France is the pioneer in this movement. Switzerland was the first country to declare that for accidents, in certain employments, the employer was to be liable without any proof of fault. (loi fédérale du 25 juin 1881.)

But the very elaborate German Act of 1884, (Unfallversicherungsgesetz, 1st Juli 1884,) has been the model upon which other countries have based their legislation. And neither England nor France, though their Acts are fourteen years later than the German,

have gone quite as far as Germany. Under the German Act, even gross fault does not bar the workman. He can recover full compensation unless he intentionally caused the accident. He can get two-thirds instead of one-half his annual earnings as in England, if he is totally incapacitated. Medical expenses, funeral expenses, and legal expenses in the action for compensation are all paid for him. And, most important of all, all employers to whom the law applies, are compelled to insure against their liability. And the act supplies an elaborated machinery for insurance societies in each district to be formed and managed under the supervision of a central authority—the Reichsversicherungsamt. Since then many countries in Europe have followed suit, but none, I think, going quite so far as Germany.

Austria passed a law in 1887, Norway in 1894, Finland in 1897, Italy and Denmark, as well as England and France in 1898.

They differ, naturally, in detail but all abandon the old theory that actual fault of the employer is the basis of liability.

The present unsatisfactory state of the law here is due to the fact that our courts are trying, without legislation, to reach the same conclusion. They are putting new wine into old bottles. It makes no difference to the employer whether we say as the French law now says :—

"You are liable without fault, merely as an employer" or say, as our courts do :—

"There must be fault, but seeing that you are an employer we presume you are in fault, or there would have been no accident."

Perhaps the courts do not put it quite so bluntly, but is not this the practical effect?

The new theory that accidents will happen and that

the "wounded soldier of industry" as he has been called, is not to be left to die by the road side, because, in his attention to his master's interests, he forgot for a moment to think of his own safety, has made astonishing progress in Europe during the last twenty years. (The new Acts in the different countries are printed with valuable introductions in the work of Dr. Zacher, Die Arbeiterversicherung im Auslande, Berlin, 1898. This book contains also full information as to the state of the law with regard to old age pensions, and insurance societies for workmen incapacitatedby sickness.)

If the countries of Europe, divided as they are from each other by immemorial prejudice, conspire to legislate in the same sense, it is surely a fact which upon this continent deserves to be noticed. It would be safe to say that no legislation of greater importance has been passed during this generation. It affects the security and happiness of millions of working-men and working-women, and of other millions of old parents, of widows and of young children whose bread-winner has been removed from them by a fatal accident. I propose to consider briefly, the causes which have brought about so important a change in the law, and, as to England and France particularly, to examine the law prior to the new Acts. I will conclude by explaining in outline the character of the new legislation.

As to the causes, they were much the same in England and France. Disregarding minor differences, the evolution of society has been upon the same general lines in all the great manufacturing and commercial countries. All alike have become vast noisy workshops, full of whizzing wheels, of smoke, of strange chemical smells, and glaring electric lights. We live in an industrial age. The old law both in England and France

grew up in different surroundings when people travelled in stage-coaches, and read law by candle-light.

"La grande industrie" was not born, and its dangers were not and could not be provided for. It is a gentlemanly and dignified old law with a great deal about seigneurs and vassals, about domestic servants and horses, and about the blacksmith or the carpenter whose services may be called in, but very little about the large workshop, and, of necessity, nothing about the dynamo or the locomotive.

Before the days of steam, and electricity, and dynamite, and lyddite, the workman could, as a general rule, protect himself by the exercise of ordinary care. His tools were few and simple. None of them moved except when he handled them, and no one was in a hurry. It is, therefore, not to be wondered at that the law gave him no claim for damages unless some fault, at least of omission, could be clearly brought down to the employer. Under modern conditions millions of workmen pass their lives in continual danger. They have to deal at close quarters with complicated machines, to handle terrible explosives, to run the risk of coming in contact with "live wires" and, in a word, to face a thousand perils. Even the strictest care cannot always save them. A boiler may burst or some other accident occur, the precise cause of which can never be discovered. Hundreds of lives have been lost by this terrible "accident anonyme," as it has been well called. In many kinds of employment the workman knows that he is exposed to mysterious and sudden danger.

He has to take the risk. It is inherent in the nature of the occupation. The master may have the best and newest plant. He may spare no expense and no vigilance in adopting every means for protecting his men. The workman may be

always on the watch. But all this cannot prevent the accident. Is it fair that the workman should bear this "risque professionel?" His employer may not be negligent, but at any rate, the work is being carried on for his profit. It is idle to say that the workman is paid at a higher rate, because his work is dangerous. The iron law of supply and demand compels him to take such wages as he can get in the state of the market.

Accident Anonyme.

Now, first, what was the legal position of the workman injured in an *accident anonyme* before the new legislation? By the common law of England it was quite settled that the workman who could not prove negligence on the part of the employer had no claim. A servant takes the ordinary risks of the employment. Cockburn, C.J., put it thus in a leading case: "Morally speaking those who employ men on dangerous work without doing all in their power to obviate the danger, are highly reprehensible, as I certainly think the company were in the present instance. The workman who depends on his employment for the bread of himself and his family is thus tempted to incur risks to which, as a matter of humanity, he ought not to be exposed. But, looking at the matter in a legal point of view, if a man, for the sake of the employment, takes it or continues in it with a knowledge of its risks, he must trust to himself to keep clear of injury," (Woodley v. Metrop. District Railway, 1877, L. R. 2 Ex. D. at p. 389; and see Thomas v. Quartermaine, 1887, L. R. (18 Q.B.D.) at p. 697.

The same doctrine has lately been again affirmed in France by the Cour de Cassation. An engineer on a steamer was killed by the explosion of a boiler.

Examination by experts failed to discover any fault in the construction of the boiler. The precise cause of the accident remained a mystery. It was held there was no liability. (Cass. 28 fév. 1897, S. 1898, 1-65.) This was, of course, before the passing of the new law.

This also seems to be the law of this Province. In several cases it has been held by the Supreme Court, that where the actual cause of the accident is purely a matter of speculation the employer is not liable. (Montreal Rolling Mills Co. v. Corcoran 1897, 26 S. C. R. 595; Canada Paint Co., v. Trainor, 1898, 28 S. C. R. 352; Dominion Cartridge Co. v. Cairns, ib. 361; Canadian Coloured Cotton Mills Co. v. Kervin, 1899, 29 S. C. R. 478.) But some judges continue to take a less strict view, and to presume the existence of fault.

But, surely, if the owner's liability is legally based on fault, and fault only, it seems difficult to say that the general rule *actori incumbit probatio* can be relaxed. If a plaintiff who sues on a contract must prove his case, one who bases his claim on the fault of the defendant must convince the Court that the facts point to the existence of some fault. Now, if this be good law, it is important to have some idea of the proportion of accidents which are "anonymes" and in which damages if the rule is strictly applied, cannot be recovered.

Before the system of compulsory insurance, which is now in force in Germany, was introduced, the government caused careful statistics for one year to be compiled.

The Reichsversicherungsamt published these figures for 1887. Out of 15,970 serious accidents, involving incapacity for work for at least three months, there were:

3156	due to fault of employer.....	or	19	p. c.
4094	" " victim.....	or	25	"
711	" " both.....	or	4	"
524	" " fellow workman or third party.....	or	3	"
6931	due to risks which were incident to the employment and in fact, unavoidable...	or	43	"
554	due to unknown cause.....	or	3	"

If these figures represent at all fairly the proportions in other countries, — and I see no reason why there should be any difference — they show that under the old rules of law the employer is only liable in about one-fourth of all the cases of serious injury.

Calculations made in Belgium confirm them.

M. Harzé estimates there, that out of a hundred accidents to workmen, seventy give no claim to legal reparation, if the law requiring actual fault is strictly applied. (see Stocquart, " Contrat de Tra ail, " p. 101). In Switzerland it was reckoned that only from 12 to 20 per cent. of accidents were due to fault of the employer. I do not doubt that, as the law is administered in this Province, the master is here held responsible in very many of the cases classed in Germany as unavoidable accidents. This result is reached by allowing " fault " to be presumed from circumstances. As judges differ widely with regard to their liberality in admitting such presumptions, an element of uncertainty is thus introduced.

Defect in Machinery or Appliances

There is, however, a large class of cases in which either direct evidence or " weighty, precise and consistent presumptions arising from the facts "--to employ the language used in the Supreme Court of

Canada, in "Montreal Rolling MillsCo. v. Corcoran" —enable the precise cause of the accident to be determined. Supposing; as often happens, that the accident is proved to be due to a defect in the machinery used. Is this in itself enough to make the employer liable? There are many cases in which his liability may be clear. His machinery may be shown to be of an antiquated and dangerous type, or the particular machine, originally good, may have been worn out, or it has been allowed to be used without reasonable inspection from time to time, and repairs, obviously needed, have not been made. Now, in cases of this kind, there has of late years been a pronounced tendency on the part of judges in England to hold employers liable in circumstances in which they would formerly have escaped. Even the language of Cockburn, C. J., which I quoted from the well-known case of "Woodley," would hardly be used now without some qualification. What that learned judge spoke of rather as a moral duty than one which the law would enforce, viz: to do all that can be done in reason to protect the safety of workmen, has now come to be looked upon as an implied term of the contract. A master whose boilers are worn out will not be heard to say that the workman took the risk as part of the terms of his engagement. It may still be good English law (apart from the new Statute) to say that the workman takes the ordinary risks of the employment. But by "ordinary risks" judges now understand such risks as are practically inevitable, such risks as even a vigilant and prudent employer cannot prevent. A very recent case in the English Court of Appeal is a good illustration of this change of judicial attitude. A tramway entered an engineering workshop, but was elevated eleven feet above the ground. The workmen in the course of their

employment had occasionally to go up to the tramway or to come down from it to the floor of the works. No ladder was provided, but an iron bar was fixed in the wall by which they helped themselves up or down. A workman in attempting to clamber down fell backward into a truck and was killed. It was held that the employer was liable, on the ground that reasonably safe means of descent from the tramway ought to have been provided. The language of Lord Herschell in Smith v. Baker (1891, App. Ca. at p. 362) was quoted with approval. "It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide proper appliances, and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk." (Williams v. Birmingham Battery Co. 1899, 2 Q. B. 338). But when proper appliances are provided and proper care is taken to keep them in order the master is not liable in England (except under the new Act) unless the workman proves that the master knew the appliances had become unsafe, and that he—the workman—was ignorant of the danger. In other words, the law requires proof that the defect in the machine was one which the master ought to have discovered.

This case of *Williams* is the high-watermark reached by the common law.

In France liability in respect of defects in machinery has been carried a stage further. In a case decided 16th June 1896, the facts were these. A boiler on a ship exploded and killed an engineer. Experts reported that they had found the cause. It was a defect in a joining of the boiler. The Cour de Cassation held that the lower court had been justified in finding the employer liable in damages. (S. 1897, 1. 17). Here there was no negligence in any ordinary sense of the

term. The defect in the boiler was occult. It was not shown that any inspection would have revealed it. Accordingly the judgment was not based on the article of the Code Napoléon corresponding to our article 1053, but on article 1384 which corresponds to our 1054. The master was held liable not for his own fault or the fault of any person, but for the fault of a thing i. e., of a thing which he had under his care. Upon this theory an employer who places a machine or a tool under the control of a workman is held to have guaranteed that it shall not injure him owing to some defect in its construction, and no proof that it was, so far as he knew, the best that money could buy, will exonerate him. I will refer to this new ground of liability later on. But the subsequent case shews that the precise " vice de construction " must be proved. It will not be presumed that because a boiler bursts it must have been defective. (Cass. 28 févr. 1897; Sirey, 1898, I. 65) By the method of judicial interpretation the highest Court in France had arrived at this very curious result. A master was liable if it could be shewn that an accident happened through some fault even latent in the construction of his machine. But he was not liable when it was impossible to say what it was that caused the machine to go wrong. This may have been a sound construction of the Code, but it is very hard to justify it upon grounds of common sense. In both cases, the workman was an innocent victim, and in both the master was absolutely free from blame. The new law is surely more logical in applying the same rule to both cases.

It remains to notice two other defences, in addition to want of proof of negligence, which were admitted by the common law in England. These are: 1. Common employment or " fellow workman " and 2. Contributory negligence.

Common Employment

1. The first is a particular case of the general rule that a workman has contracted to take the ordinary risks incident to the work. One of these risks is that he may be injured by the negligence of a fellow-workman. If so, it was a firmly established rule of law in England that he had no redress except against the fellow workman. In a leading case, Lord Cairns said : " In the event of his (i. e. the employer's) not personally superintending and directing the work, he is bound to select proper and competent persons to do so, and to furnish them with adequate materials and resources for the work. When he has done this, he has in my opinion, done all that he is bound to do. And if the persons so selected are guilty of negligence, this is not the negligence of the master " (Wilson v. Merry, L. R., 1 Sc. App. at p. 332). His liability for the negligence of the fellow-servant is in fact similar to that for a defective boiler. He must be reasonably careful in selecting both, and must take reasonable care to see that they work properly. But he does not guarantee either. Boilers will occasionally burst from mysterious causes, and servants will be careless. If injury results this is not the fault of the master. It seems rather curious that a master should be liable for an injury done to a stranger who is present on some lawful errand in his works; but not liable to one of his own workmen who is hurt by the carelessness of his fellow. But such was the law in England. It led to many fine distinctions as to who was a fellow-workman, when there were sub-contracts or several contractors engaged on the same work. Many of these difficulties were cleared up by the judgment of the House of Lords in " Johnson v. Lindsay," 1891, A.C. 371. The harshness of the law upon this point was

mitigated in certain cases by the Employers' Liability Act of 1880. Under that Act, speaking roughly, the injured workman could not be met with the defence of "fellow-workman" if the fellow-workman whose negligence caused the injury was a foreman or other superior in charge of the work, or was in a position of authority over the injured man and ordered him to do the act which led to the accident. If, however, the negligent workman was of the same grade as the victim and not in any position to give orders the common law still barred recovery. A closely similar Act was passed in Ontario, (R. S. O., 1897, ch. 160).

The new Act of 1897, in the cases to which it applies, sweeps away this defence of common employment. In France, the fact that the injury was caused by the fault of a fellow-workman of the victim does not excuse the master.

There is one case mentioned by Sourdat (vol. 2, s. 911) in which the "Cour Royale de Toulouse," admitted the defence precisely upon the grounds on which it is supported in England. But the judgment was quashed for the reason that art. 1384 (our art. 1054) makes no such distinction, but declares generally that every person is responsible for the damage caused by the fault of persons under his control. This view is now sustained by a uniform jurisprudence. (See Pothier, Oblig., No. 121; Sourdat, "Traité de la Responsabilité," 2, s. 911; Larombière, art. 1384, (9).

In this province there seems to have been some hesitation, before codification, as to whether the English or the French rule was to be followed. In two cases noticed by Mr. Sharpe I see the English doctrine was applied. But it seems now to be established that the plea of fellow-workman is not good. (Bélanger v. Riopel, M. L. R., 3 S. C. 258, Court of

Review; Queen v. Filion 1894, 24 S. C. R. 482; Robinson v. C. P. R. Ry, 1887, 14 S. C. R. at p. 114.)

Contributory Negligence.

2. The second defence of the English common law, to which I wish to refer, is the familiar plea of contributory negligence. It was a doctrine of the Roman law, (Grueber, Lex Aquilia, p. 228.)

This defence has in modern times occasioned a great deal of legal metaphysics as to "proximate cause," "principal and determining cause," "cause directly contributing to the accident" "*causa causans*" and so on. The principle itself is not very obscure, though it has often been presented in a very obscure way. I will make an attempt to state it in few words.

1. The plea of contributory negligence does not arise when the accident occured solely through the negligence of the employer or of the victim.

2. There must be two distinct faults or negligences, one on the part of the employer or of some one for whom he is responsible, and the other on the part of the victim.

3. Without the combination of both faults the accident would not have happened.

4. If the two causes operated at the same moment, or in other words, if the accident was due to the simultaneous negligence of both parties, neither of them can recover damages.

5. If the two causes were not simultaneous in their action, but if one was prior to the other, the question is which of them was the last in time, or in other words the proximate cause of the accident.

6. If the last or proximate cause was the negligence of the plaintiff himself he cannot recover. He is said to be barred by contributory negligence. On the

other hand if the last or proximate cause was the negligence of the defendant, he is liable. The prior negligence of the plaintiff is then disregarded. It is not contributory.

The doctrine may be stated also in this form:

1. If the accident was caused by the simultaneous negligence of both parties there is no liability.

2. If, in spite of the prior negligence of the defendant, the accident would not have happened unless the plaintiff had afterwards been negligent, there is no liability.

3. The defendant, on the other hand is liable, if in spite of the prior negligence of the plaintiff, he could have prevented the accident by exercising reasonable care.

Every one is bound to take reasonable care of his own safety, and reasonable care of the safety of his neighbours. He must even be reasonably careful in dealing with people whose own conduct is careless. A plaintiff is not allowed to say "I know that I was careless, and that my carelessness was the proximate cause of the accident, but still the defendant was first to blame."

But a defendant is not allowed to say "admitting that my negligence was the proximate cause of the accident, yet the plaintiff was first to blame." In the former case the common law says "your own carelessness directly caused the accident, so you cannot recover." In the latter it says, "it was the defendant's carelessness which after all was the proximate cause and he is not excused by the carelessness of the plaintiff, which would have caused no injury if he had been keeping a bright look out."

The doctrine is frequently misunderstood. It never involves the weighing of one fault against another, to judge which is the greater, heavier or principal

fault. The question is whose was the fault which was the proximate or immediate cause of the accident.

E. g. in the well-known old case of Butterfield v. Forrester 1809, 11 East, 60, the defendant, who had been repairing his house, had carelessly left a pole barring part of the road. The plaintiff, riding fast in the evening, ran into the pole, and was thrown, and injured. It was held that he could not recover, as in spite of the defendant's negligence, he might with ordinary caution have avoided the pole. In many cases it has been held that a man who proceeds to cross a crowded street or "*a fortiori*," a railway line, without looking to see that the road is clear, cannot recover damages, if he is run over, though the vehicle may have been carelessly driven, or the driver may have failed to ring a bell or sound a whistle. (See e. g, Dublin R. v. Slattery. 1878, 3 App. Ca. 1155). Contributory negligence is, however, a plea much more often stated than sustained. By English practice the question of whether there was contributory negligence is left to the jury, and juries are, in general, inclined to help a plaintiff, in such cases, over a few legal obstacles.

I am not concerned to justify the equity of the rule as to contributory negligence. There is a great deal to be said for the proposition that a man is not entitled to create a danger, and that if he does so and harm results he must be liable. But the English law distinguishes between causing a danger and causing an injury. (See Metropolitan Ry., v. Jackson 3 App. Ca., 193 ; Dublin Ry., v. Slattery, 1878, 3 App, Ca., 1166 ; Davy v. London & S. W. Ry. Co., 1883, 12 Q. B. D., 76).

Of course the doctrine must be understood and applied with due reason and regard to the particular circumstances.

The law only expects a man to exhibit ordinary care in getting out of the way of a threatened calamity. If my negligence is so great that another, not unreasonably, loses his head and does something which it would have been wiser not to do, and so is hurt, I am not permitted to say : " People must not give way to panic, if you had shewn perfect ' sang-froid ' you would not have been injured." So, if a horse runs away from some defect in the reins, or the driver, and a passenger jumps out, and breaks his leg, he may recover if upon the facts it seems that his fright was not out of all proportion to the danger. Lord Ellenborough said : " If I place a man in such a situation that he must adopt a perilous alternative, I am responsible for the consequences." (Jones v. Boyce. 1816, 1 Starkie, 493).

Or, if a bale of wool is falling from a window, and I take a step which, instead of clearing it, brings me under the bale, I am not barred, for absolute control of one's nerves, is not to be looked for at such a moment. (Woolley v. Scovell, 3 Manning & Ryland, 105).

Further a child is only expected to think as a child, and will not be disentitled to recover because an older person might have got out of the way of the danger. An employer must take special care of employees whose youth is likely to make them thoughtless, (Bartonshill Coal Co. v. McGuire, 3 Macqueen, 311). In a recent case, the Court of Appeal, in England, held that a girl of *seventeen*, which Lord Esher describes as a "tender age," was not barred by contributory negligence when she had neglected to put on a mask provided for the employers in a soda-water manufactory and was injured by a bottle which burst. (Crocker v. Banks, 4 Times, L. R., 324).

But apart from such specialties the common law in England, and also in America, holds that a plaintiff

cannot recover if the proximate cause of the accident was his own carelessness. The leading case now is The Bernina, 1888, 13 App. Ca., 1. The Employers'' Liability Act of 1880, did not alter the law upon this point.

Faute commune.

The expression "contributory negligence" is not a happy one. It suggests, what is the fact, that two faults contribute to cause the accident. But it does not suggest, what is more important, that the English law in such cases pays regard only to one of the two faults, viz the later. "Contributory negligence," in fact, always means "negligence, on the part of the plaintiff, which was the proximate cause of the accident and therefore bars his right to recover." When the accident is due to the simultaneous negligence of both,—as when A. crosses the track without looking up and down the line, and B. fails to ring the bell,—the negligence of A. and the negligence of B. are equally proximate causes of the accident. By English law the two faults cancel each other, there is no liability, and it is natural enough to say that if either A. or B. brought an action he could be met by the defence of "contributory negligence." But when the two faults are not concurrent, the moment it is established that the negligence of the plaintiff was "contributory" then the earlier negligence of the defendant is thrown entirely out of consideration. It was not the proximate cause.

I have never been able to understand the justice of this. In many cases it seems to me, by sustaining a plea of contributory negligence equity is sacrificed to a false show of logic. The very name "contributory" shows that two faults were involved. Why then are we to take account of one, and to disregard the other?

The negligence of the defendant was as truly "contributory" in common sense if not in law, as was that of the plaintiff. If A. is lying drunk on the road, and B. carelessly drives over him A's negligence is not "contributory" because there would have been no accident if B. had not been subsequently negligent. This is the law, and B. must pay damages. But why does not the English law allow B. to say "my careless driving would have led to no accident if you had been free from blame."

Or if I wrongfully put an obstruction across the highway, as in *Butterfield* v. *Forrester* why should I get off scot-free because by taking care the plaintiff might have avoided it. I am certainly to blame, and but for my fault there would have been no accident. Why then should I bear no part of the loss?

A jury in these cases is inclined to take the law into its own hands and to reduce the damages. But the direction of the judge may be too strong for them. In law whenever the jury find that there was contributory negligence, the plaintiff cannot recover any damages. The distinction between the English and the French law upon this point is well brought out in the language of Pollock, C. B. "A person who is guilty of negligence, and thereby produces mischief to another, has no right to say: 'Part of that mischief would not have arisen if you yourself had not been guilty of some negligence.' I think that where the negligence of the party injured did not, in any degree, contribute to the immediate cause of the accident, such negligence ought not to be set up as an answer to the action, and certainly I am not aware that, according to any decision which has ever occurred, the jury are to take the consequences and divide them in proportion accordiug to the negligence of the one or the other party." (*Greenland* v. *Chaplin*, 1850, 5 Ex. 243).

In Scotland the English rule is followed, and a recent case illustrates its injustice. A guest in a hotel, during the night opened a door which he mistook for the door of a lavatory. It opened into the elevator, and he fell and was injured. The jury thought there was negligence on the plaintiff's part in stepping forward in the dark, and there was no doubt that this negligence was the proximate cause of the accident. But they thought the hotel keeper had also been negligent in not having the door into the elevator more carefully guarded and distinguished. They brought in a verdict "Find for the plaintiff, but in respect of there being contributory negligence on the part of the plaintiff, assess the damages at £300." It was held that there must be a new trial on the ground that the jury were not entitled after finding contributory negligence proved to give any damages to the plaintiff. (*Florence* v. *Mann*, 1890, Court of Session Cases, 4th Series, vol. 18, p. 247). I do not doubt that the law was correctly applied, but I cannot help thinking that the verdict, though bad in law, was both just and sensible.

In regard to contributory negligence the French law, takes a more lenient view. It is now generally admitted by French Courts that where both plaintiff and defendant are shown to have been in fault, — where there is *faute commune* the Court must try to apportion the damages. The plaintiff ought not to get full damages, seeing he was partly to blame, but he ought to get some damages seeing he was not wholly to blame. (Cass., 10th Nov. 1884, D. 85, 1. 433 ; Cass. 29th March 1886, D. 87, 1. 480, Sourdat, 1. s. 662 ; Baudry-Lacantinerie, "Précis," 2. s. 1348.) The question as to whose fault was the proximate cause has not here the same importance as in the English theory. The Court considers rather which is the

principal cause, or whose negligence is the greater, and adjusts the damages accordingly. If the parties seem to have been about equally to blame the loss is divided. In many French Courts the practice has become common to give the plaintiff in such cases half the damages to which he would otherwise have been entitled. "He has suffered to the extent of $1000, but he was himself to blame, give him $500." If, however, his fault was very gross and that of the defendant very slight, damages may be refused altogether, (Larombière, art. 1382, No. 29).

The rule of dividing the loss in such a way if possible as that each of the two negligent parties shall pay for that part of it which is due to his fault is applied in English law to the liability of two shipowners whose vessels come into collision by the fault of both. Sir F. Pollock says it is "a rule of thumb" (Torts, 2nd ed., p. 412), and so it may be But, I confess, I prefer it to the rule of making one fault cancel another. In the *Bernina*, (13 App. Ca. 1) Lindley, L. J., declared, he could not see why the admiralty principle as to injuries to ships, might not with equal justice be applied to cases of injuries to persons.

In this Province the French rule as to *faute commune* entitling the Court to divide the damages was spoken of with approval by Dorion, C. J., in C. P. R. Co. v. Cadieux, 1887, M. L. R., 3 Q. B. 315. That learned judge said, however, that up to that time it had not been adopted in the Province of Quebec. Since then it has been applied in several cases (Clement v. Rousseau, R. J. Q., 1 C. S. 263; Carbonneau v. Lainé, R. J. Q., 5 C. S. 343; Lapierre v. Donnelly, M. L. R., 7 S. C. 197). I am not in a position to say whether it is now regarded as settled law.

So far as I can discover the point has not yet been

fully discussed in the Supreme Court. The difference between the French view and the English was founded upon in the very recent case of Roberts v. Hawkins, (1898, 29 S. C. R. 218). But in the result the Court found that there was in that case no negligence on the part of the defendants to which the negligence of the plaintiff might have been contributory. The accident was caused solely by the plaintiff's own fault.

Recent French Jurisprudence.

I have now stated, as fairly as I can in the space at my disposal, the English law prior to 1898, and I have indicated two important points, viz. : the defences of "fellow-workman" and "contributory negligence," as to both of which the French law was more favourable to the workman. I now wish to notice briefly a somewhat curious development of the French law of quite recent date. As the hardship of allowing the *risque professionnel* to fall on the workman came to press more and more upon the popular conscience it began to be suggested by ingenious lawyers that possibly the Civil Code was more humane than had hitherto been thought. Was it clear that the workman must prove that his employer had been in fault? Might not the law presume fault without proof? or might there not be discovered in the code some other provision under which the employer might be found liable, though his freedom from fault was as clear as the noon-day sun?

It is proverbial in England that "hard cases make bad law." Now, speaking with all respect for those who differ, I think that a better illustration of the proverb could hardly be found than in the recent attempts made in France and Belgium to circumvent the code upon the question of employers' liability.

Given a poor workman, a rich employer, (perhaps a large railway company), an ingenious advocate, and a humane judge anxious to give a reparation which he feels that natural justice demands, and, as all lawyers will see, a good deal may be done with a code. In Belgium, the *question ouvrière* has been for years very acute, and it is, therefore, not surprising that the main attack upon the old law has been directed from that quarter.

The articles 1382, 1386 of the Code Civil Belge are identical with those of the Code Napoléon, and, with one or two differences immaterial for the present purpose, identical also with our articles 1053, 1055. One of the chief advocates of the new view was M. Sainctelette, a former minister of state in Belgium. (Sainctelette, *De la responsabilité et de la garantie, Paris et Bruxelles*, 1884, see esp. pp. 129 seq.) Other supporters are Laurent (vol. 20, No. 639) and Marc Sauzet, *Revue critique de législation et de jurisprudence*, 1883.

The arguments take two forms :

1. Retaining the theory of all the old writers, and of the jurisprudence, that the liability of the employer rests on delict or quasi-delict, it is urged that, if an accident occurs, there is a presumption that the master is in fault, and he is liable in damages unless he proves that the accident was due to an unavoidable cause. The ordinary rules of evidence are to be inverted to meet the "hard case" of the workman, and the onus is to be thrown on the defendant. The argument is supported by the provisions of the Code, that one is responsible for the things which he has under his care—*sous sa garde*,—and by the analogy of the liability, incurred by the owner of an animal which hurts anyone, or of a building which falls and causes loss to a third person.

M. Sainctelette himself presented this contention before the *Cour de Cassation de Belgique*, but did not succeed in convincing the court. They held that the owner of an animal was liable not as owner but as negligent. That this was so in the case of the owner of the building was shewn by the fact that he was only liable when the ruin happened from want of repairs, or from original defect in its construction. (*Journal des Tribunaux*, 1889, p. 441).

2. The soundness of the old law is challenged upon an entirely different ground. Leaving out of sight altogether the question of negligence — *faute délictuelle* — may not the master be held liable for breach of contract — *faute contractuelle* ?

This seems still more adventurous. It is seriously maintained that in every contract of employment there is an implied term that the employer shall return the workman safe and sound to the bosom of his family. If he does not fulfil this implied obligation he is in breach of contract. This view has been adopted in Luxembourg by the *Cour Supérieure*. (S. 1885, 4, 25).

That Court has held that under the contract the employer guarantees the workman against accidents from machinery. *Il doit répondre de sa machine vis-à-vis de ses ouvriers.* The master must pay for the *accident anonyme*. He can only escape by proving that the accident was due either to the fault of the workman or to *force majeure*. And *force majeure* is not *cas fortuit*. *Force majeure* must be something quite unconnected with the machine or the work, not part of the *risque professionnel*. E. g. if the workman is swallowed up by an earthquake, or devoured by a bear, the employer is not held to have contracted to take such a risk for it is not incident to the work. The French Courts, at least the Cour de Cassation, and the Courts of Appeal, in spite of many attacks and

of a torrent of arguments from the commentators, stood firm in applying the old doctrine that there was no liability unless the master was in fault and unless the workman proved it. Mons. Esmein in two admirable notes to the cases in S. 1897, 1.17 and S. 1898, 1.65, sums up the rules adhered to by the *Cour de Cassation*, thus:

"*Faute du patron, responsabilité du patron.*

"*Faute de l'ouvrier, pas de responsabilité du patron.*

"*Accident anonyme, i. e. — si l'ouvrier ne peut prouver "aucune faute définie du patron,—pas de responsabilité "du patron.*"

The furthest point they reached, was in the case already cited where they held the employer liable as for fault where the workman could point to a definite *vice de construction* of a machine as the cause of the accident. The argument that the responsability for the fault of a thing under a man's charge — *sous sa garde* applies to a machine used in carrying on a work, would be more specious if any support could be found for it in the old law. Unfortunately this is not the case.

Attentive reading of the articles of the Code, in the light of such writers as Bourjon, (liv. 6, tit. 3, chs. 6 and 7) and Domat, (liv. 2, tit. 8, ss. 2 and 3) makes any such contention very difficult. A ground of obligation so vastly important could hardly have escaped the notice of Pothier. Yet there is nothing in his work to lend any countenance to it. Moreover, there is absolutely no ground to suppose that the codifiers meant to introduce any new law. Mons. Esmein argues, and his argument convinces me, that the old law never contemplated a man being held liable for a pure accident. Liability in the case of the vicious animal or the ruinous building is natural enough. The owner of an animal can restrain it, or if this is

impossible, he can kill it. He has no right to allow it to cause danger or damage to his neighbour. As to the house the owner has himself to blame if it falls from want of repairs. Defect of construction is more difficult, but even here the owner of a house has generally some warning, and some opportunity of preventing the house tumbling about his own and his neighbour's ears. At most these are exceptional cases founded on ancient practice, and on the Roman law. It is surely a rather violent use of analogy to apply the same rule to an employer's liability for a machine, carefully bought, and carefully tended, which suddenly bursts from a defect which no vigilance could have prevented. In one year in Germany 6,931 accidents to workmen occurred from causes which were inevitable. Is it reasonable to extend to them the principle applied by the Code to the rare case of the ruinous house?

After years of discussion the best authorities in France remained unconvinced that the Code could stand the strain to which it was being subjected and public opinion was satisfied that it was safer and better to proceed by way of legislation. The history of the new law and the numerous vicissitudes through which it passed in its various stages, are given briefly, but clearly, in Sirey, *Lois Annotées*, 1899, (pp. 761, seq.) Of the actual working of the old law in France I cannot speak from experience. Judging from the literature it seems to have been bad enough. Expensive and uncertain, it was a night-mare to the employer, without being, by any means, a sure protection to the workman. As regards the English system I can speak from some years of observation. It always seemed to me to combine, in a marvellous degree, the maximum of cost with the minimum of gain to anyone except the lawyers. Their interest is, of course, important, but

it is hardly the primary interest to consider. Now, in England, the employer was not spared. Whether he won or lost, he had heavy costs to pay. His recourse against the plaintiff when he won was, naturally, worthless. As the Scotch proverb says: "You cannot take the breeks from a Highlander" and you cannot get £2000 of costs from a poor workman. Very often an employer, knowing this, compromised a threatened action, though he believed he had a good legal defence. In other cases employers who were insured against claims were compelled for the sake of preserving their recourse against the insurance company to dispute claims which they would otherwise have admitted to be just.

On the other hand, the workman had to face a long and uncertain litigation and in the very numerous cases where there was some fault on his part he was not entitled to recover. Even when he succeeded in breaking down every defence he often found that a large part of the damages recovered went into the pocket of his lawyer as extrajudicial expenses. In recovering a sum of perhaps £300 an expense of from £1,000 to £2,000 was often incurred. The employer has to pay —let us say—£2,300, the workman perhaps gets £200, and £2,100 is swallowed up in lawyers' fees, and other expenses. Such a system of remedy in accident-cases was, I really think, hardly worth transplanting to the American Continent, and that a country like the United States, where democracy is said to be triumphant, should remain contented with it altogether baffles my comprehension.

New English Act.

I now proceed to consider the new legislation. The new Act in England came into operation on 1st July,

1898. It is cited as the Workmen's Compensation Act, 1897 (60 and 61 Vict. c. 37.) Though passed on the 6th August, 1897, its commencement was postponed until the 1st July following, in order to give time to employers to effect insurances, and make such other arrangements as might seem necessary.

1. The act is not universal. It is limited to certain trades. It applies to railwaymen, factory hands, miners, quarrymen, men employed in "engineering work" and, with some limitations, to men employed in building operations. "Factory," however, is a wide word; it means any premises where for the purpose of gain a manufacturing process is carried on with the assistance of steam, water, or other mechanical power, and in addition, eighteen specified kinds of works, whether mechanical power is used or not. It is estimated that the Act applies to between six and seven millions of workers. It leaves out sailors, agricultural labourers, domestic servants and workers in many small handicrafts.

2. The workman can recover if the injury was caused by an accident arising out of and in the course of the employment. He has not to prove any fault of the employer or of the plant.

But he is barred if it is proved that the injury is attributable to his own "serious and wilful misconduct." As to this, it is to be noted (a) that the onus of proving the misconduct lies on the employer. (b) that it must be misconduct, not merely negligence, and (c) that it must be wilful. I suppose a man who went on to a roof to repair it when he was in a state of intoxication, or a man who struck a match in a gunpowder factory, contrary to the rules, would be regarded as guilty of such misconduct as is here intended. But the more common case of inattention or carelessness even of a gross character

would not be sufficient. Even so, the French law is more liberal and the German law goes further than any. In France, the workman can recover unless he has *intentionnellement provoqué l'accident*, which would be the act of a lunatic or a suicide. The Court may diminish the damages, but cannot altogether refuse to give damages in the case when the accident is due to the *faute inexcusable* of the workman, (art. 20). In Germany no question of the workman's fault arises. He can always recover the full amount unless he has purposely caused the accident. (den Betriebsunfall vorsätzlich herbeigeführt, s. 5, ss. 7).

3. Contracting out is only allowed by the Workmen's Compensation Act subject to very stringent conditions.

When there is a scheme of insurance in force, which, in the opinion of the Registrar of Friendly Societies is not less favourable to the workmen than the provisions of the Act, the employer may contract with the men that the scheme so approved of shall be substituted for the Act in their case. This was inserted because many companies and large employers had benefit-schemes in operation, and large funds invested. It makes the Registrar master of the situation, and secures to the workman that he cannot be deprived of the benefit of the Act unless he gets something at least as good in exchange.

4. If the employer has insured himself against his liability for accident-claims, and he afterwards becomes bankrupt, the workman has a first charge upon the sum payable by the insurers. This is a very important protection, as it can hardly be doubted that most employers, will now need to provide against their new liabilities by insurance.

The persons entitled to compensation are workmen of all grades, including overseers and clerks, or

in case of fatal accidents, their dependants. "Dependants," is used, however, in a rather restricted sense. It means such members of the workman's family specified in Lord Campbell's Act (Fatal Accidents Act, 1846), as were wholly or in part dependant on the earnings of the workman at his death. Pecuniary loss must be suffered, e. g. a father, whose son has been killed, has no claim, unless as a matter of fact, he was being supported wholly or partly by his son.

5. The compensation is in the form of a lump sum in case of death, or a weekly payment in case of total or partial incapacity for work. The sum payable in fatal cases can never exceed £300. It will generally be less, for it cannot exceed the workman's earnings for the previous three years. But if the earnings were less than £150, that sum can nevertheless be recovered. The dependants of a skilled workman whose wages were $20 a week, as they can never get more than $1500, will only get a sum equal to about the earnings for a year and a half.

When the accident causes total or partial incapacity, the compensation is a weekly payment not exceeding 50 per cent. of the workman's average earnings, and in no case more than one pound a week. The employer may, after six months, redeem the weekly payments by a lump sum fixed by arbitration. I note, in passing, that both the French and German laws are more liberal in the case of a workman permanently incapacitated for any work. In that very sad, but unfortunately, not very uncommon case, the French or German workman is entitled to an annuity equal to two thirds of his former earnings.

6. Procedure. Failing agreement as to the liability to compensate, or the amount of compensation, the question is to be settled by arbitration. This means that if a committee representing the employer and the men

exists, (as is the case in some large works), the committee may decide, if the parties both agree to this course. Otherwise, they may choose an arbitrator, and, failing agreement, the county-court judge is to be arbitrator. In practice, the county-court judge will generally be the arbitrator, because he will have to do the work as part of his ordinary duties, whereas an arbitrator mutually chosen would have to be paid. The procedure is to be simple and summary, and there is no appeal on matters of fact.

Upon matter of law there is an appeal.

7. The remedies open to a workman before the Act are not taken away. He may still sue the employer at common law, but the master's liability is alternative and not additional. If the workman choose to proceed under the Act, and he recovers compensation, he cannot afterwards bring any other claim. In cases where the fault is clear and the loss great, it may still be an advantage for the workman to proceed at common law, for then he can recover damages to any amount which a sympathetic jury may give, instead of being limited to £300.

New French Law.

I now turn to the French law.

It is the outcome of twenty years discussion. Some statistics collected by the 4th Civil Chamber in Paris will give a better idea of the unsatisfactory working of the old law, than pages of description. They calculated that of 349 actions for compensation on account of accident between 1878 and 1881, only 152 resulted in favour of the plaintiff. Only 51 were decided within a year, 159 took between one and two years, 73 between two and three years, 36 more than three years. One action dragged over seven years.

The first proposal was the bill of Mons. Martin Nadaud, in 1880, to invert the burden of proof. The employer was to be liable unless he proved that the accident was due to the fault of the victim. This, however, never passed, and gradually opinion came round in favour of the theory of *risque professionnel*, i. e., that, apart from all considerations of fault, compensation for injuries should be, as it were, a first charge upon the profits of the employment.

1. The Act as finally passed, applies to all industrial employments, building, mining and the like, and every *exploitation* in which machinery driven by artificial power is used. It does not apply to sailors, but they are provided for by a separate law of 21 april 1898. All contracts against the Act are null.

2. Workmen to whom the Act applies have now no claim except under the Act. The Act does not apply in full to workmen whose annual earnings exceed 2,400 francs or $480. In computing the compensation due to them the excess above $480 is only reckoned at one-fourth of its actual amount: Thus, a workman who gets a salary of 4000 francs is for the purposes of the Act treated as getting only 2,800 i. e. 2,400 and one fourth of 1,600. But as to this it may be agreed that the workman's whole salary shall form the basis of calculation. Such an agreement is not null, as contrary to the Act.

3. The employer is liable for medical expenses, and for funeral expenses, but the last only up to 100 francs.

4. Gratuitous legal aid is given by the State (*assistance judiciaire*).

5. In case of fatal accident the compensation is not a lump sum as in England. It is a *rente viagère*.

The widow is entitled to 20 per cent. of the annual earnings of the husband. If she marries again she gets a lump sum of three years' annuity, and it then ceases.

Children legitimate or illegitimate get a *rente* up to to the age of 16.

One child gets 15 per cent., two get 25 per cent., three get 35 per cent. and for four or more 40 per cent. is payable.

A mother and four children will thus get altogether 60 per cent. of the father's earnings. And if the mother is dead the *rente* for the children is higher. They then get 20 per cent. each, but not more than 60 per cent. in all.

Failing widow and children, ascendants, or descendants more remote than children, are entitled each of them to 10 per cent. of the earnings of the victim, but so that not more than 30 per cent. shall be paid in all.

6. The family of a foreign workman have no claim to compensation if they were not living in French territory at the time of the accident.

The German law is the same. The English law upon this point is more generous, and makes no distinction between foreigners and British subjects It is to be hoped that the exclusion of foreigners from a claim expressly based on grounds of justice and humanity will not long continue in force.

7. A workman totally and permanently incapacitated from work is to get a *rente* equal to two-thirds of his earnings.

In the case of partial and permanent incapacity he gets an annuity equal to half the reduction in his earnings.

In the case of temporary incapacity he gets half the amount of his earnings at the time of the accident.

I have already spoken as to the effect of fault in diminishing his claim.

8. The workman's claim in the case of permanent incapacity, and the claim of his representatives in fatal

cases is absolutely assured to him. If he cannot recover it from his employer, or from an insurance company in which his employer has insured, the annuity will be paid by the state. A special guarantee fund is established for this purpose, supported by a tax upon employers, and the state through the *caisse nationale* has a recourse against the particular employer who has failed to pay the annuities for which he was liable.

Space does not allow me to compare the two laws with each other more fully. It is evident that in two important points the French law is more favourable to the workman. In the first place the French workman is absolutely secure of getting his annuity. An English workman might be defeated of his compensation if the employer were bankrupt and uninsured. No doubt the larger employers at least will generally be insured. But this is not compulsory; and the state guarantee will give the French workman a security which his English brother has not.

Second, payment by *rente*, or annuity, is I think much better for the workman than payment by a lump sum. A poor family suddenly receiving a lump sum will be exposed to many risks, and it is to be feared that the sum recovered in too many cases will be managed in an improvident way. In such matters, however, it is *le premier pas qui coûte.* The establishment of the broad principle that workmen are to be indemnified for the risks arising out of their occupation, even though the employer was not to blame, is a step of infinite importance.

It is generally admitted that the English Act has not diminished litigation so much as was hoped. The number of disputed cases so far has been very great. That, however, arises merely from defective draughtmanship, It ought not to be impossible to indicate

in unambiguous terms to what employments the Act should apply. Many of the English cases turn upon this point. And the expression "serious and wilful misconduct" has caused much difficulty.

If we compare the state of matters in this Province, I think it will hardly be disputed that the law is just now in a somewhat unsettled and unsatisfactory condition. The opinions of the judges differ considerably as to what they will regard as sufficient evidence of fault. Some go further even than the *Cour de Cassation*, and do not require the workman to specify and prove any precise *vice de construction* when the accident is caused by machinery. It is enough that it was the master's machine. If it goes wrong, there must be some fault in it. Moreover, there is a conviction, no doubt justified by experience, that the Supreme Court takes a more rigorous view than the judges of the lower Court. Accordingly damages are frequently laid at nineteen hundred and ninety nine dollars to prevent the possibility of appeal.

Both as regards the proof of fault and of the amount of damages there is the greatest uncertainty. This is in itself a grave evil. An impression that the large or small amount awarded depends on the particular judge before whom the case is heard, is calculated to discredit the administration of justice. And such a tendency is certainly not lessened by knowing that careful provision has been made to prevent the case ever reaching the highest tribunal in the country. Now, unless the united voice of Europe is wrong, the workman's claim is founded in justice and equity even though fault is not shewn. If so, and if that opinion is now general in this country also, it would surely be better to amend the law than to torture the Code.

The experience of Germany has not been to show that the change is a heavy burden upon employers.

The sum for which they are liable is limited in amount, whereas judges, and still more, juries, frequently award extravagant sums.

It seems to me difficult to contend that a change in the statutory law by a moderate and well-drawn Act would increase in this province the burden resting upon the employers, Its main effect would be to give legislative sanction to a liability which is already enforced in practice. And there is no doubt it would clear up a great deal that is at present uncertain and confused.

There is a great saving in litigation, and the insurance companies enable employers to spread the risk in such a way that it is least burdensome. Moreover, employers, more than any other class, must know the dangers which surround the workman, and must be anxious to see him protected so far as possible.

WORKMEN'S COMPENSATION ACT, 1897

[60 and 61 Vict., ch. 37.]

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment. [6th August 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that:—

(*a.*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed;

(*b.*) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this

Act, except in case of such personal negligence or wilful act as aforesaid ;

(*c.*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4.) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed ; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this subsection when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

2.—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or if there be more than one office, any one of the offices of such body.

3.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2.) The Registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged by the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer

all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

4.—Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workmen employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of th s section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

5.—(1.) Where an employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the

county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

6.—Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

7.—(1.) This Act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined on or in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this act—

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896:

"Factory" has the same meaning as in the Factory

and Workshop Acts, 1878 to 1891 andalso includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power:

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies:

"Quarry" means a quarry under the Quarries Act, 1894:

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable:

"Dependants" means—

(*a.*) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependant upon the earnings of the workman at the time of his death ; and

(*b.*) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependant upon the earnings of the workman at the time of his death.

(3.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

8.—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

9.—Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

10.—(1.) This Act shall come into operation on the first day of July, one thousand eight hundred and ninety-eight.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

SCHEDULES.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

Scale

(1.) The amount of compensation under this Act shall be—

(*a*) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependant upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer ;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependant upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, my be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants ; and

(iii.) if he leaves no dependants, the reasonable ex-

penses of his medical attendance and burial, not exceeding ten pounds.

(*b.*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent, of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employers, such weekly payment not to exceed one pound.

(2.) In fixing the amount of the weekly payment regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident, and the average amount which he is able to earn after the accident, and to any payment not being wages he may receive from the employer in respect of his injury during the period of his incapacity.

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the Registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practioner provided and paid by the employer, or such other person ; but if the workman objects to an examination by that medical practioner, or is dissatisfied by the certificate of such practioner upon his condition when communicated to him, he may submit himself for examination to one of the medical prac-

tioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14.) A weekly payment, a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17.) In the application of this Act to Ireland the

provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

ARBITRATION.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitation :—

(1.) If any committee, representative of an employer and his workmen exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but an arbitrator

may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the county court judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this Act, have the the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by to or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of this schedule to Scotland—

(*a.*) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court;"

(*b.*) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral;

(*c.*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them, and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced.

(15) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge," shall include the recorder of any city or town.

LOI

concernant les responsabilités des accidents dont les ouvriers sont victimes dans leur travail

du 9 avril 1898.

Titre I. —INDEMNITÉS EN CAS D'ACCIDENTS

1. Les accidents survenus par le fait du travail, ou à l'occasion du travail, aux ouvriers et employés occupés dans l'industrie du bâtiment, les usines, manufactures, chantiers, les entreprises de transport par terre et par eau, de chargement et de déchargement, les magasins publics, mines, minières, carrières et, en outre, dans toute exploitation ou partie d'exploitation dans laquelle sont fabriquées ou mises en œuvre des matières explosives, ou dans laquelle il est fait usage d'une machine mue par une force autre que celle de l'homme ou des animaux, donnent droit, au profit de la victime ou de ses représentants, à une indemnité à la charge du chef d'entreprise, à la condition que l'interruption de travail ait duré plus de quatre jours.

Les ouvriers qui travaillent seuls d'ordinaire ne pourront être assujettis à la présente loi par le fait de la collaboration accidentelle d'un ou de plusieurs de leurs camarades.

2. Les ouvriers et employés désignés à l'article précédent ne peuvent se prévaloir, à raison des accidents dont ils sont victimes dans leur travail, d'aucunes dispositions autres que celles de la présente loi.

Ceux dont le salaire annuel dépasse deux mille quatre cents francs (2.400 fr.) ne bénéficient de ces dispositions que jusqu'à concurrence de cette somme. Pour le surplus, il n'en droit qu'au quart des rentes ou indemnités stipulés à l'article 3, à moins de conventions contraires quant au chiffre de la quotité.

3. Dans les cas prévus à l'article 1, l'ouvrier ou l'employé a droit :

Pour l'incapacité absolue et permanente, à une rente égale aux deux tiers de son salaire annuel ;

Pour l'incapacité partielle et permanente, à une rente égale à la moitié de la réduction que l'accident aura fait subir au salaire ;

Pour l'incapacité temporaire, à une indemnité journalière égale à la moitié du salaire touché au moment de l'accident, si l'incapacité de travail a duré plus de quatre jours et à partir du cinquième jour.

Lorsque l'accident est suivi de mort, une pension est servie aux personnes ci-après désignées, à partir du décès, dans les conditions suivantes :

(*a.*) Une rente viagère égale à 20 p. 100 du salaire annuel de la victime pour le conjoint survivant non divorcé ou séparé de corps, à la condition que le mariage ait été contracté antérieurement à l'accident. En cas de nouveau mariage, le conjoint cesse d'avoir droit à la rente mentionnée ci-dessus ; il lui sera alloué dans ce cas, le triple de cette rente à titre d'indemnité totale.

(*b.*) Pour les enfants, légitimes ou naturels, reconnus avant l'accident, orphelins de père ou de mère, âgés de moins de seize ans, une rente calculée sur le salaire annuel de la victime à raison de 15 p. 100 de ce salaire s'il n'y a qu'un enfant, de 25 p. 100 s'il y en a deux, de 35 p. 100 s'il y en a trois, et 40 p. 100 s'il y en quatre ou un plus grand nombre.

Pour les enfants, orphelins de père et de mère, la rente est portée pour chacun d'eux à 20 p. 100 du salaire.

L'ensemble de ces rentes ne peut, dans le premier cas, dépasser 40 p. 100 du salaire ni 60 p. 100 dans le second.

(*c.*) Si la victime n'a ni conjoint ni enfant dans les termes des paragraphes *a* et *b*, chacun des ascendants et descendants qui était à sa charge recevra une rente viagère pour les ascendants et payable jusqu'à seize ans pour les descendants. Cette rente sera égale à 10

p. 100 du salaire annuel de la victime, sans que le montant total des rentes ainsi allouées puisse dépasser 30 p. 100.

Chacune des rentes prévues par le paragraphe *c* est, le cas échéant, réduite proportionnellement.

Les rentes constituées en vertu de la présente loi sont payables par trimestre ; elles sont incessibles et insaisissables.

Les ouvriers étrangers, victimes d'accidents qui cesseront de résider sur le territoire français recevront, pour toute indemnité, un capital égal à trois fois la rente qui leur avait été allouée.

Les représentants d'un ouvrier étranger ne recevront aucune indemnité si, au moment de l'accident, ils ne résidaient pas sur le territoire français.

4. Le chef d'entreprise supporte en outre les frais médicaux et pharmaceutiques et les frais funéraires. Ces derniers sont évalués à la somme de cent francs (100 fr.) au maximum.

Quant aux frais médicaux et pharmaceutiques, si la victime a fait choix elle-même de son médecin, le chef d'entreprise ne peut être tenu que jusqu'à concurrence de la somme fixée par le juge de paix du canton, conformément aux tarifs adoptés dans chaque département pour l'assistance médicale gratuite.

5. Les chefs d'entreprise peuvent se décharger pendant les trente, soixante ou quatre-vingt dix premiers jours à partir de l'accident, de l'obligation de payer aux victimes les frais de maladie et l'indemnité temporaire, ou une partie seulement de cette indemnité, comme il est spécifié ci-après, s'ils justifient :

1o. Qu'ils ont affilié leurs ouvriers à des sociétés de secours mutuels et pris à leur charge une quote-part de la cotisation qui aura été déterminée d'un commun accord, et en se conformant aux status-type approuvés par le ministre compétent, mais qui ne devra pas être inférieure au tiers de cette cotisation ;

2o. Que ces sociétés assurent à leurs membres, en cas de blessures, pendant trente, soixante ou quatre-vingt-dix jours, les soins médicaux et

pharmaceutiques et une indemnité journalière. Si l'indemnité journalière servie par la société est inférieure à la moitié du salaire quotidien de la victime, le chef d'entreprise est tenu de lui verser la différence.

6. Les exploitants des mines, minières et carrières, peuvent se décharger des frais et indemnités mentionnés à l'article précédent moyennant une subvention annuelle versée aux caisses ou sociétés de secours constituées dans ces entreprises en vertu de la loi du 29 juin 1894.

Le montant et les conditions de cette subvention devront être acceptés par la société et approuvés par le ministre des travaux publics.

Ces deux dispositions seront applicables à tous autres chefs d'industrie qui auront créé en faveur de leurs ouvriers des caisses particulières de secours en conformité du titre III de la loi du 29 juin 1894. L'approbation prévue ci-dessus sera, en ce qui les concerne, donnée par le ministre du commerce et de l'industrie.

7. Indépendamment de l'action résultant de la présente loi, la victime ou ses représentants conservent, contre les auteurs de l'accident autres que le patron ou ses ouvriers et préposés, le droit de réclamer la réparation du préjudice causé, conformément aux règles du droit commun.

L'indemnité qui leur sera allouée exonérera à due concurrence le chef d'entreprise des obligations mises à sa charge.

Cette action contre les tiers responsables pourra même être exercée par le chef d'entreprise, à ses risques et périls, au lieu et place de la victime ou de ses ayants droit, si ceux-ci négligent d'en faire usage.

8. Le salaire qui servira de base à la fixation de l'indemnité allouée à l'ouvrier âgé de moins de seize ans ou à l'apprenti victime d'un accident ne sera pas inférieur au salaire le plus bas des ouvriers valides de la même catégorie occupés dans l'entreprise.

Toutefois, dans le cas d'incapacité temporaire, l'in-

demnité de l'ouvrier âgé de moins de seize ans ne pourra pas dépasser le montant de son salaire.

9. Lors du règlement définitif de la rente viagère, après le délai de revision prévu à l'article 19, la victime peut demander que le quart au plus du capital nécessaire à l'établissement de cette rente, calculé d'après les tarifs dressés pour les victimes d'accidents par la caisse des retraites pour la vieillesse, lui soit attribué en espèces.

Elle peut aussi demander que ce capital, ou ce capital réduit du quart au plus comme il vient d'être dit, serve à constituer sur sa tête une rente viagère réversible, pour moitié au plus, sur la tête de son conjoint. Dans ce cas, la rente viagère sera diminuée de façon qu'il ne résulte de la réversibilité aucune augmentation de charge pour le chef d'entreprise.

Le tribunal, en chambre du conseil, statuera sur ces demandes.

10. Le salaire servant de base à la fixation des rentes s'entend, pour l'ouvrier occupé dans l'entreprise pendant les douze mois écoulés avant l'accident, de la rémunération effective qui lui a été allouée pendant ce temps, soit en argent, soit en nature.

Pour les ouvriers occupés pendant moins de douze mois ayant l'accident, il doit s'entendre de la rémunération effective qu'ils ont reçu depuis leur entrée dans l'entreprise, augmenté de la rémunération moyenne qu'on reçue, pendant la période nécessaire pour compléter les douze mois, les ouvriers de la même catégorie.

Si le travail n'est pas continu, le salaire annuel est calculé tant d'après la rémunération reçue pendant la période d'activité que d'après le gain de l'ouvrier pendant le reste de l'année.

Titre II.—DÉCLARATION DES ACCIDENTS ET ENQUÊTE.

11. Tout accident ayant occasionné une incapacité de travail doit être déclaré, dans les quarante-huit heures, par le chef d'entreprise ou ses préposés, au maire de la commune qui en dresse procès-verbal.

Cette déclaration doit contenir les noms et adresses des témoins de l'accident. Il y est joint un certificat de médecin indiquant l'état de la victime, les suites probables de l'accident et l'époque à laquelle il sera possible d'en connaître le résultat définitif.

La même déclaration pourra être faite par la victime ou ses représentants.

Récipissé de la déclaration et du certificat du médecin est remis par le maire au déclarant.

Avis de l'accident est donné immédiatement par le maire à l'inspecteur divisionnaire ou départemental du travail ou à l'ingénieur ordinaire des mines chargé de la surveillance de l'entreprise.

L'article 15 de la loi du 2 novembre 1892 et l'article 11 de la loi du 12 juin 1893 cessent d'être applicables dans les cas visés par la présente loi.

12. Lorsque, d'après le certificat médical, la blessure paraît devoir entraîner la mort ou une incapacité permanente absolue ou partielle de travail, le maire transmet immédiatement copie de la déclaration et le certificat médical au juge de paix du canton où l'accident s'est produit.

Dans les vingt-quatre heures de la réception de cet avis, le juge de paix procède à une enquête à l'effet de rechercher :

1° La cause, la nature et les circonstances de l'accident ;

2° Les personnes victimes et le lieu où elles se trouvent ;

3° La nature des lésions ;

4° Les ayants droit pouvant, le cas échéant, prétendre à une indemnité ;

5° Le salaire quotidien et le salaire annuel des victimes.

13. L'enquête a lieu contradictoirement dans les formes prescrites par les articles 35, 36, 37, 38 et 39 du code de procédure civile, en présence des parties intéressées ou celles-ci convoquées d'urgence par lettre recommandée.

Le juge de paix doit se transporter auprès de la victime de l'accident qui se trouve dans l'impossibilité d'assister à l'enquête.

Lorsque le certificat médical ne lui paraîtra pas suffisant, le juge de paix pourra désigner un médecin pour examiner le blessé.

Il peut aussi commettre un expert pour l'assister dans l'enquête.

Il n'y a pas lieu, toutefois, à nomination d'expert dans les entreprises administrativement surveillées, ni dans celles de l'Etat placées sous le contrôle d'un service distinct du service de gestion, ni dans les établissements nationaux où s'effectuent des travaux que la sécurité publique oblige à tenir secrets. Dans ces divers cas, les fonctionnaires chargés de la surveillance ou du contrôle de ces établissements ou entreprises et, en ce qui concerne les exploitations minières, les délégués à la sécurité des ouvriers mineurs, transmettent au juge de paix, pour être joint au procès-verbal d'enquête, un exemplaire de leur rapport.

Sauf les cas d'impossibilité matérielle dûment constatés dans le procès-verbal, l'enquête doit être close dans le plus bref délai et, au plus tard, dans les dix jours à partir de l'accident. Le juge de paix avertit, par lettre recommandée, les parties de la clôture de l'enquête et du dépôt de la minute au greffe, où elles pourront, pendaut un délai de cinq jours, en prendre connaissance et s'en faire délivrer une expédition, affranchie du timbre et de l'enregistrement. A l'expiration de ce délai de cinq jours, le dossier de l'enquête est transmis au président du tribunal civil de l'arrondissement.

14. Sont punis d'une amende de un à quinze francs (1 à 15 fr.) les chefs d'industrie ou leurs préposés qui ont contrevenu aux dispositions de l'article 11.

En cas de récidive dans l'année, l'amende peut être élevée de seize à trois cents francs (16 à 300 fr.).

L'article 463 du code pénal est applicable aux contraventions prévues par le présent article.

Titre III. — COMPÉTENCE. JURIDICTIONS. PROCÉDURE REVISION.

15. Les contestations entre les victimes d'accidents et les chefs d'entreprise, relatives aux frais funéraires, aux frais de maladie ou aux indemnités temporaires, sont jugées en dernier ressort par le juge de paix du canton ou l'accident s'est produit, à quelque chiffre que la demande puisse s'élever.

16. En ce qui touche les autres indemnités prévues par la présente loi, le président du tribunal de l'arrondissement convoque, dans les cinq jours à partir de la transmission du dossier, la victime ou ses ayants droit et le chef d'entreprise, qui peut se faire représenter.

S'il y a accord des parties intéressées, l'indemnité est définitivement fixée par l'ordonnance du président qui donne acte de cet accord.

Si l'accord n'a pas lieu, l'affaire est renvoyée devant le tribunal, qui statue comme en matière sommaire, conformément au titre XXIV du livre II du code de procédure civile.

Si la cause n'est pas en état, le tribunal sursoit à statuer et l'indemnité temporaire continuera à être servie jusqu'à la décision définitive.

Le tribunal pourra condamner le chef d'entreprise à payer une provision, sa décision sur ce point sera exécutoire nonobstant appel.

17. Les jugements rendus en vertu de la présente loi sont susceptibles d'appel selon les règles du droit commun. Toutefois, l'appel devra être interjeté dans les quinze jours de la date du jugement s'il est contradictoire et, s'il est par défaut, dans la quinzaine à partir du jour où l'opposition ne sera plus recevable.

L'opposition ne sera plus recevable en cas de jugement par défaut contre partie, lorsque le jugement aura été signifié à personne, passé le délai de quinze jours à partir de cette signification.

La cour statuera d'urgence dans le mois de l'acte d'appel. Les parties pourront se pourvoir en cassation.

18. L'action en indemnité prévue par la présente loi se prescrit par un an à dater du jour de l'accident.

19. La demande en revision de l'indemnité fondée sur une aggravation ou une atténuation de l'infirmité de la victime ou son décès par suite des conséquences de l'accident, est ouverte pendant trois ans à dater de l'accord intervenu entre les parties ou de la décision définitive.

Le titre de pension n'est remis à la victime qu'à l'expiration des trois ans.

2 . Aucune des indemnités déterminées par la présente loi ne peut être attribuée à la victime qui a intentionnellement provoqué l'accident.

Le tribunal a le droit, s'il est prouvé que l'accident est dû à une faute inexcusable de l'ouvrier, de diminuer la pension fixée au titre 1er.

Lorsqu'il est prouvé que l'accident est dû à la faute inexcusable du patron ou de ceux qu'il s'est substitué dans la direction, l'indemnité pourra être majorée, mais sans que la rente ou le total des rentes allouées puisse dépasser soit la réduction soit le montant du salaire annuel.

21. Les parties peuvent toujours, après détermination du chiffre de l'indemnité due à la victime de l'accident, décider que le service de la pension sera suspendu et remplacé, tant que l'accord subsistera, par tout autre mode de réparation.

Sauf dans le cas prévu à l'article 3, paragraphe A, la pension ne pourra être remplacée par le paiement d'un capital que si elle n'est pas supérieure à 100 fr.

22. Le bénéfice de l'assistance judiciaire est accordé de plein droit, sur le visa du procureur de la République, à la victime de l'accident ou à ses ayants droit, devant le tribunal.

A cet effet, le président du tribunal adresse au procureur de la République, dans les trois jours de la comparution des parties prévue par l'article 16, un extrait de son procès-verbal de non-conciliation ; il y joint les pièces de l'affaire.

Le procureur de la République procède comme il

est prescrit à l'article 13 (paragraphe 2 et suivants) de la loi du 22 janvier 1851.

Le bénéfice de l'assistance judiciaire s'étend de plein droit aux instances devant le jnge de paix, à tous les actes d'exécution mobilière, et immobilière et à toute contestation incidente à l'exécution des décisions judiciaires.

Titre IV.—Garanties.

23. La créance de la victime de l'accident ou de ses ayants droit relative aux frais médicaux, pharmaceutiques et funéraires ainsi qu'aux indemnités allouées à la suite de l'incapacité temporaire de travail, est garantie par le privilège de l'article 2101 du code civil et y sera inscrite sous le no 6.

Le payment des indemnités pour incapacité permanente de travail ou accidents suivis de mort est garanti conformément aux disposition des articles suivants.

24. A défaut, soit par les chefs d'entreprise débiteurs, soit par les sociétés d'assurances à primes fixes ou mutuelles, ou les syndicats de garantie liant solidairement tous leurs adhérents, de s'acquitter, au moment de leur exigibilité, des indemnités mises à leur charge à la suite d'accidents ayant entraîné la mort ou une incapacité permanente de travail, le payement en sera assuré aux intéressés par les soins de la caisse nationale des retraites pour la vieillesse, au moyen d'un fonds spécial de garantie constitué comme il va être dit et dont la gestion sera confiée à la dite caisse.

25. Pour la constitution du fonds spécial de garantie, il sera ajouté au principal de la contribution des patentes des industriels visés par l'article 1er, quatre centimes (0 fr· 04) additionnels. Il sera perçu sur les mines une taxe de cinq centimes (0 fr. 05) par hectare concédé.

Ces taxes pourront, suivant les besoins, être majorées ou réduites par la loi de finances.

26. La caisse nationale des retraites exercera un

recours contre les chefs d'entreprise débiteurs, pour le compte desquels des sommes auront été payées par elle, conformément aux dispositions qui précèdent.

En cas d'assurance du chef d'entreprise, elle jouira, pour le remboursement de ses avances, du privilège de l'article 2102 du code civil sur l'indemnité due par l'assureur et n'aura plus de recours contre le chef d'entreprise.

Un règlement d'administration publique déterminera les conditions d'organisation et de fonctionnement du service conféré par les dispositions précédentes à la caisse nationale des retraites et, notamment, les formes du recours à exercer contre les chefs d'entreprise débiteurs ou les sociétés d'assurances et les syndicats de garantie, ainsi que les conditions dans lesquelles les victimes d'accidents ou leurs ayants droit seront admis à réclamer à la caisse le payment de leurs indemnités.

Les décisions judiciaires n'emporteront hypothèque que si elles sont rendues au profit de la caisse des retraites exerçant son recours contre les chefs d'entreprise ou les compagnies d'assurances.

27. Les compagnies d'assurances mutuelles ou à primes fixes contre les accidents, françaises ou étrangères, sont soumises à la surveillance et au contrôle de l'État et astreintes à constituer des réserves ou cautionnements dans les conditions déterminées par un règlement d'administration publique.

Le montant des réserves ou cautionnements sera affecté par privilège au payement des pensions et indemnités.

Les syndicats de garantie seront soumis à la même surveillance et un règlement d'administration publique déterminera les conditions de leur création et de leur fonctionnement.

Les frais de toute nature résultant de la surveillance et du contrôle seront couverts au moyen de contributions proportionnelles au montant des réserves ou cautionnements, et fixés annuellement, pour chaque compagnie ou association, par arrêté du ministre du commerce.

28. Le versement du capital représentatif des pen-

sions allouées en vertu de la présente loi ne peut être exigé des débiteurs.

Toutefois, les débiteurs qui désireront se libérer en une fois pourront verser le capital représentatif de ces pensions à la caisse nationale des retraites, qui établira à cet effet, dans les six mois de la promulgation de la présente loi, un tarif tenant compte de la mortalité des victimes d'accidents et de leurs ayants droit.

Lorsqu'un chef d'entreprise cesse son industrie, soit volontairement, soit par décès, liquidation judiciaire ou faillite, soit par cession d'établissement, le capital représentatif des pensions à sa charge devient exigible de plein droit et sera versé à la caisse nationale des retraites. Ce capital sera déterminé au jour de son exigibilité, d'après le tarif visé au paragraphe précédent.

Toutefois, le chef d'entreprise ou ses ayants droit peuvent être exonérés du versement de ce capital, s'ils fournissent des garanties qui seront à déterminer par un règlement d'administration publique.

Titre V.—DISPOSITIONS GÉNÉRALES.

29. Les procès-verbaux, certificats, acte de notoriété, significations, jugements et autres actes faits ou rendus en vertu et pour l'exécution de la présente loi, sont délivrés gratuitement, visés pour timbre et enregistrés gratis lorsqu'il y a lieu à la formalité de l'enregistrement.

Dans les six mois de la promulgation de la présente loi, un décret déterminera les émoluments des greffiers de justice de paix pour leur assistance et la rédaction des actes de notoriété, procès verbaux, certificats, significations, jugements, envois de lettres recommandées, extraits, dépôts de la minute d'enquête au greffe, et pour tous les actes nécessités par l'application de la présente loi, ainsi que les frais de transport auprès des victimes et d'enquête sur place.

30. Toute convention contraire à la présente loi est nulle de plein droit.

31. Les chefs d'entreprise sont tenus, sous peine d'une amende de un à quinze francs (1 à 15 fr), de faire afficher dans chaque atelier la présente loi et les règlements d'administration relatifs à son exécution.

En cas de récidive dans la même année, l'amende sera de seize à cent francs (16 à 100 fr.)

Les infractions aux dispositions des articles 11 et 31 pourront être constatées par les inspecteurs du travail.

32. Il n'est point dérogé aux lois, ordonnances et règlements concernant les pensions des ouvriers, apprentis et journaliers appartenant aux ateliers de la marine et celles des ouvriers immatriculés des manufactures d'armes dépendant du ministère de la guerre.

33. La présente loi ne sera applicable que trois mois après la publication officielle des décrets d'administration publique qui doivent en régler l'exécution.

34. Un règlement d'administration publique déterminera les conditions dans lesquelles la présente loi pourra être appliquée à l'Algérie et aux colonies.

La présente loi, délibérée et adoptée par le Sénat et par la Chambre des députés, sera exécutée comme loi de l'Etat.

Fait à Paris, le 9 avril 1898.